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17 Attorneys for Plaintiff  
18 BRAVE SOFTWARE, INC.

19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**  
21 **SAN FRANCISCO DIVISION**

22 BRAVE SOFTWARE, INC.,  
23 Plaintiff,

24 v.

25 NEWS CORPORATION d/b/a NEWS CORP,  
26 DOW JONES & CO., INC., NYP HOLDINGS,  
27 INC., NEWS CORP UK & IRELAND LTD.,  
28 NEWS CORP AUSTRALIA,  
Defendants.

Case No. 25-2503

**BRAVE SOFTWARE, INC.'S  
COMPLAINT FOR DECLARATORY  
JUDGMENT OF (1) NO COPYRIGHT  
INFRINGEMENT, (2) COPYRIGHT  
MISUSE, AND (3) NO BREACH OF  
CONTRACT**

**JURY TRIAL DEMANDED**

1 Plaintiff Brave Software, Inc. (“Brave”) brings this action for declaratory judgment of no  
2 copyright infringement, copyright misuse, and no breach of contract against Defendants News  
3 Corporation d/b/a News Corp (“News Corp”), Dow Jones & Co. (“Dow Jones”), NYP Holdings,  
4 Inc. (“NYP Holdings”), News Corp UK & Ireland Limited (“News Corp UK”), and News Corp  
5 Australia (collectively, “Defendants”).

### 6 **PRELIMINARY STATEMENT**

7 1. Defendants, companies that earn billions of dollars in annual revenue selling  
8 publications such as the *Wall Street Journal* and the *New York Post*, are engaged in an  
9 anticompetitive bullying campaign, built on an incorrect legal premise, to enrich themselves.

10 2. Defendants’ erroneous interpretation of the law, if applied, would set a precedent  
11 copyright holders could wield to eliminate search engines, and—at minimum—to prevent any  
12 company from offering a new search engine, restricting the search market, and ultimately consumer  
13 choice, to only the largest incumbent Big Tech search engines, Google Search and Microsoft’s Bing.  
14 And by targeting Brave, the only privacy-focused search engine, instead of Google or Microsoft’s  
15 Bing search engines that collect and leverage user data and which have well-documented privacy  
16 issues, Defendants also have waged a war on privacy. This is, as a result, a case of significant  
17 consequence.

18 3. As it stands today, there are tremendous barriers to entering the search engine market,  
19 which is dominated by Google, a company that holds nearly 90% of the market. The remaining  
20 market share is dominated by Microsoft’s Bing, which also powers search engines like Yahoo and  
21 DuckDuckGo (making them alternatives to Big Tech in name only). Brave stands alone in the  
22 market as a search engine alternative to Big Tech in the United States. And it took Brave over 10  
23 years of research and development efforts and costs to build its technology and obtain the search  
24 volume it has today, which is substantial and growing but still represents less than 1% of the market.  
25 Defendants, which partner with Google, seek to bully Brave out of the market and push the market’s  
26 already-high barriers to entry infinitely higher.

27 4. Defendants claim, in a cease-and-desist letter accusing Brave of infringement,  
28 threatening legal action, and demanding “compensation,” that maintaining a search engine that

1 directs users to their publicly available websites is copyright infringement. They contend that  
2 indexing their website content, which all search engine operators must do to exist, is copyright  
3 infringement and breaches their websites' terms of service.

4 5. Defendants' allegations are wrong. Decades of legal precedent and practice confirm  
5 that it is not copyright infringement to index website content to maintain a search engine. Instead,  
6 it is fair use. Indeed, all four statutory fair use factors weigh in favor of fair use. That is because  
7 Brave interacts with Defendants' content, much of which is not copyright-protected, in a  
8 transformative way—to operate a search engine, which none of Defendants do. Moreover,  
9 Defendants' copyrighted works, largely news articles, are heavily factual. Brave also uses only an  
10 amount of the works necessary to operate a search engine and to respond to specific search queries.  
11 Importantly, the search results Brave provides cite the sources from which information is provided  
12 and direct users to those hyperlinked sources. Thus, Brave's search engine directly benefits  
13 Defendants by driving internet traffic to their websites, providing additional avenues for Defendants  
14 to convert users into subscribers and make money from advertising.

15 6. There is no basis in contract law for Defendants' allegations that Brave has breached  
16 their terms of service, which they claim prohibit and restrict Brave's ability to access and extract  
17 data as necessary to operate a search engine. These terms of service are preempted by the federal  
18 Copyright Act as a matter of law. And Brave never agreed to these browse-wrap and click-wrap  
19 terms of service, which are contracts of adhesion that violate public policy.

20 7. All told, Defendants' effort to leverage their flawed allegations to bully Brave into  
21 ceasing its fair use and paying extortionate "compensation" for past use of Defendants' content is  
22 copyright misuse, and it threatens to kill competition in the search engine market.

23 8. Nearly 30 years ago, in 1998, Congress enacted the Digital Millennium Copyright  
24 Act, which provided a safe harbor from copyright infringement liability for search engine providers  
25 because Congress recognized that "the [i]nternet . . . made it possible for information—including  
26 valuable American copyrighted works—to flow around the globe in a matter of hours," and, as a  
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1 consequence, copyright law needed to be “set . . . up to meet the promise and the challenge of the  
2 digital world.”<sup>1</sup>

3 9. Defendants’ threats and demands that Brave cease its lawful conduct necessary to  
4 operate a search engine, if allowed to stand by the Court, would create a precedent that copyright  
5 holders could wield to destroy search engines, thereby depriving the public of the many benefits of  
6 search engines that Congress recognized nearly 30 years ago. And even if search engines were not  
7 destroyed entirely, the search market would become (even more) prohibitively expensive to enter,  
8 effectively reserving the space exclusively for Microsoft and Google, two multi-trillion dollar  
9 companies.

10 10. Defendants’ allegations also threaten to disrupt the development of generative  
11 artificial intelligence (“GenAI”), a nascent technology many consider to be as important as the  
12 development of the internet and the most important innovation of our generation.

13 11. GenAI chatbots, including OpenAI’s popular ChatGPT and Google’s Gemini, rely  
14 on responses from search engines, which are provided to the chatbots through APIs, to give users  
15 accurate, up-to-date responses to their questions. Defendants contend that this use of the Brave  
16 search engine—which is legally no different from the search functionality described above—is also  
17 copyright infringement.

18 12. This case, as a result, is of great importance. As explained, Defendants’ accusations  
19 and demands threaten to bully Brave out of the search market. The effect of those threats, if  
20 successful, will bully others out as well, drastically impacting the search market and the development  
21 of GenAI.

22 13. Brave filed this lawsuit because it will not yield to Defendants’ bullying and illegal  
23 demands, which find no basis in the law.

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<sup>1</sup> 144 Cong. Rec. S11,889 (daily ed. Oct. 8, 1998) (statement of Sen. Orrin Hatch).

## INTRODUCTION

1  
2 14. Brave offers a search engine called Brave Search, a fast-growing alternative to  
3 Google, the dominant search engine that currently holds nearly 90% of the search engine market  
4 share, and Bing, the Microsoft search engine that holds most of the remainder of the market.<sup>2</sup>

5 15. Brave is one of three American companies to build search engine technology at scale.  
6 The other two entities are Google and Microsoft—two Big Tech giants, each valued at over \$2  
7 trillion (more than many countries). As Judge Amit P. Mehta explained in his August 5, 2024  
8 opinion finding that Google is a monopolist and has violated Section 2 of the Sherman Act, the  
9 federal antitrust law, other search engines, like DuckDuckGo and Yahoo, are ostensibly competitors  
10 but they actually “syndicate their search results from Bing.”<sup>3</sup> In other words, Brave represents the  
11 only true search engine alternative to Google and Microsoft.<sup>4</sup>

12 16. Brave has gained a foothold in the search engine space and begun to take some of  
13 Google’s and Microsoft’s market share because it offers a revolutionary product: a search engine  
14 that provides lightning-fast, accurate responses without compromising user privacy. Brave does not  
15 sell, share, or even collect its users’ personal data. This is a significant differentiator from other  
16 search engines, which have been repeatedly maligned for their invasive privacy policies.<sup>5</sup> This  
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19 <sup>2</sup> StatCounter, *Search Engine Market Share Worldwide – February 2025*,  
20 <https://gs.statcounter.com/search-engine-market-share>.

21 <sup>3</sup> *See United States v. Google LLC*, 747 F. Supp. 3d 1, 38 (D.D.C. 2024).

22 <sup>4</sup> *See id.*

23 <sup>5</sup> *See, e.g.*, Imran Rahman-Jones, BBC, *Critics Say New Google Rules Put Profits Over Privacy*  
24 (Feb. 15, 2025), <https://www.bbc.com/news/articles/cm21g0052dno> (calling Google's new rules  
25 on user tracking and IP address collection, referred to as fingerprinting, "a blow to privacy because  
26 it is harder for users to control what data is collected about them."); Paul Monckton, Forbes, *Your  
27 Google Search History Could Soon Be Accessed By Google’s Gemini AI* (Mar 10, 2025),  
28 [https://www.forbes.com/sites/paulmonckton/2025/03/10/googles-gemini-ai-could-soon-gain-full-  
access-to-your-search-history/](https://www.forbes.com/sites/paulmonckton/2025/03/10/googles-gemini-ai-could-soon-gain-full-access-to-your-search-history/) (describing an “experimental [Google] Gemini Personalization  
model” which would allow Google’s chatbot to access and respond based on users’ search  
histories. “The privacy concerns should here should be obvious. Our search histories say a lot  
about us, and automated tools, especially powerful AI-based ones, significantly increase the ease  
with which this most personal information can be exploited.”).

1 includes reports that Google manipulates search results based on information it gathers on its users,<sup>6</sup>  
2 which is associated with the spread of misinformation.<sup>7</sup> Users appreciate Brave’s unique approach  
3 to their privacy concerns, which has led to Brave’s growth.

4 17. Brave, like the Google and Bing search engines, systematically browses, or “crawls,”  
5 the publicly available internet to “discover” and catalog web content in a central database that can  
6 be drawn on to provide search results. The cataloging process is known as “indexing,” and this is  
7 what makes the web searchable and, thus, more accessible to consumers. To be clear, Brave only  
8 accesses and indexes content that a provider has made available to all internet users. For example,  
9 Brave never accesses or indexes content that a provider (a) places behind a paywall, (b) requires  
10 login and password information to access, or (c) has otherwise taken steps to prevent it from being  
11 accessed by labeling the content as not indexable through the use of a “noindex” tag.<sup>8</sup>

12 18. The process also is essential to Brave’s ability to extract, or “scrape,” limited data  
13 from webpages, such as hyperlinked URLs and descriptions, that are presented to users via their  
14 search results page. Brave also extracts limited data to create summaries to answer user queries as  
15 appropriate and to create limited “snippet” excerpts that appear below hyperlinked search results  
16 and provide short previews of linked third-party content.

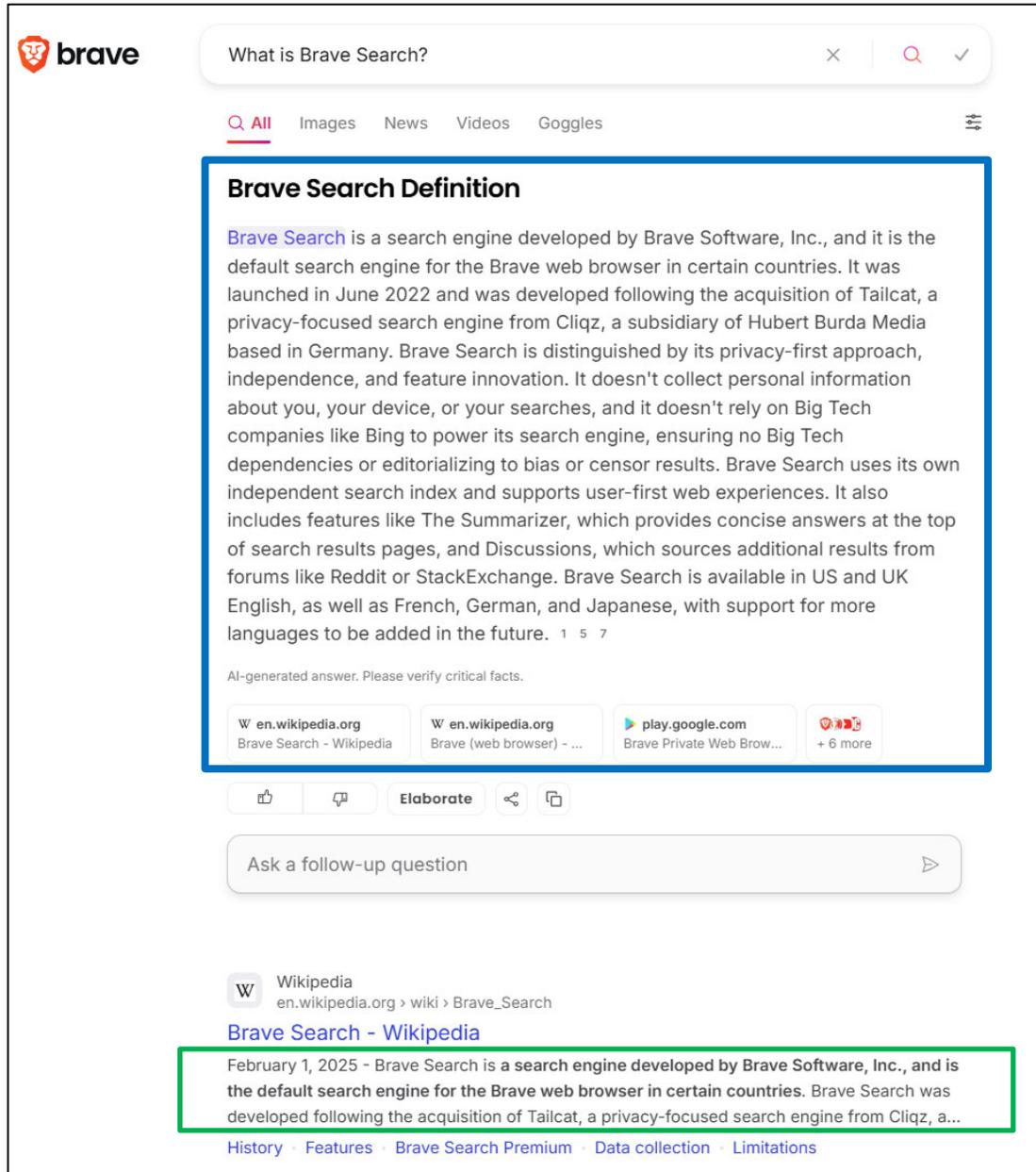
17 19. In the annotated screenshot of a Brave Search result page, a Brave Search summary  
18 is shown in the **blue box** and a snippet excerpt is shown in the **green box**:

22 \_\_\_\_\_  
23 <sup>6</sup> See Lawrence Meyers, CCN, *Google Manipulates Search Results, Former Engineer Shockingly*  
24 *Confirms* (June 8, 2023), <https://www.ccn.com/google-manipulates-search-results-former-engineer-shockingly-confirms/> (report that Google presents users with different search results based on information Google gathers about users, including where a user is physically located).

25 <sup>7</sup> See, e.g., Scientific American, Lauren Leffer, *How Search Engines Boost Misinformation* (Dec.  
26 20, 2023), <https://www.scientificamerican.com/article/how-search-engines-boost-misinformation/>.

27 <sup>8</sup> See, e.g., Sarah Berry, SEO.com, *What Is a Noindex Tag? A Beginner’s Guide to Noindex in*  
28 *SEO* (Nov. 13, 2023), <https://www.seo.com/basics/glossary/no-index/> (“A noindex tag is a <meta> tag or robots directive instructing search engines not to index an HTML or non-HTML resources, like PDF, image, or video files.”).

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20. As discussed in detail below, all search engines “crawl,” index, summarize, and create snippets; these functions are core to the modern search engine.

21. Defendants allege these functions constitute infringement of the many copyright-protected articles (each an individual “work”) that Defendants make publicly available on their websites. Defendants also allege that Brave’s conduct violates their websites’ terms of use, which prohibit “scraping,” a process by which data can be extracted from webpages.

1           22.     Indexing allows Brave, like Google and Bing, to provide “search results” in response  
2 to user searches, or queries. Brave’s search results include only information relevant to a user’s  
3 query, including, for each webpage: a hyperlink; a timestamp; the title of the page; and one or more  
4 “snippets” of relevant text excerpted from the webpage. To be clear, Brave provides users limited  
5 content (a) only from third-party sites that Google also indexes, (b) in response to search engine  
6 queries, (c) that is directly relevant to the query, and (d) that does not provide a user with the full  
7 content of any third-party work. By providing the hyperlink and page title, Brave identifies the  
8 source of the information being provided (for example, Defendants’ websites). Brave does not  
9 purport to have created or own any of the third-party content that is linked in its search results.

10           23.     Brave’s search result pages may also contain short, summarized answers to user  
11 queries as appropriate, like other search engines provide. Brave’s summaries are written in the form  
12 of a natural language response by an AI-powered feature that summarizes publicly available third-  
13 party content available on third-party webpages. These summaries are accompanied by citations to  
14 the sources that were drawn on along with links to those websites. Google and other search engines  
15 provide similar features.<sup>9</sup>

16           24.     Brave, like other search engines, is able to provide search results because Brave  
17 “indexes” much of the publicly available internet, including third-party websites. Indexing is the  
18 process by which a search engine explores the web, discovers and analyzes website content, and  
19 then stores that information in a database called an index. This allows the search engine to quickly  
20 retrieve and display relevant pages in search results when a user queries for information. And  
21 indexing is what allows a search engine to organize and categorize web pages to make them easily  
22 searchable. Indexing is what allows a search engine to provide a link to, for example, CNN.com, in  
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24 <sup>9</sup> Google Search Central, [https://developers.google.com/search/docs/appearance/ai-](https://developers.google.com/search/docs/appearance/ai-overviews#:~:text=AI%20Overviews%20appear%20in%20Google,web%20and%20Google's%20Knowledge%20Graph)  
25 [overviews#:~:text=AI%20Overviews%20appear%20in%20Google,web%20and%20Google's%20](https://developers.google.com/search/docs/appearance/ai-overviews#:~:text=AI%20Overviews%20appear%20in%20Google,web%20and%20Google's%20Knowledge%20Graph)  
26 [Knowledge%20Graph](https://developers.google.com/search/docs/appearance/ai-overviews#:~:text=AI%20Overviews%20appear%20in%20Google,web%20and%20Google's%20Knowledge%20Graph) (“AI Overviews appear in Google Search results when our systems  
27 determine that generative responses can be especially helpful . . . .”); Emma Roth, *The Verge*,  
28 *Bing’s AI Redesign Shoves the Usual List of Search Results to the Side* (July 24, 2024),  
<https://www.theverge.com/2024/7/24/24205404/bing-ai-search-redesign> (“Bing’s new search  
experience puts AI-generated answers front and center while pushing traditional search results to  
the side.”).

1 response to a user’s search for “CNN” or “Cable News Network.” Notably, Brave’s search results  
2 do not provide users with the full content or full text of any third-party webpage.

3 25. As noted above, Brave provides search results that contain “snippets,” which are  
4 short excerpts of third-party content specifically intended to be responsive to the user’s query. Each  
5 snippet, with a maximum of 300 characters, represents, on average, less than 1% of third-party  
6 content. Snippet content is generated from the Brave Search index, as well as through an AI model  
7 that analyzes pages and extracts the snippet of text most relevant to the user’s query. Brave’s use  
8 of “snippets” in its search results is fair use and is similar to the snippets offered by other search  
9 engines, like Google and Bing, as part of their search engine results.<sup>10</sup>

10 26. Unlike other search engines, Brave does not collect, share, and sell user data—a  
11 monetization avenue that other companies capitalize on, with serious consequences for user privacy.  
12 Brave does, however, take advantage of another traditional search engine monetization avenue  
13 leveraged by Defendants’ partner Google and Bing: Brave provides third-party GenAI chatbots  
14 access to Brave’s search functionality, via the Brave Search API offering. This allows third-party  
15 chatbots to essentially step into the shoes of a Brave search engine user. The chatbot can use Brave  
16 to search and leverage the search results, which include links to third-party webpages and snippets  
17 from those webpages, to identify information and third-party websites to draw on to respond to its  
18 users at the point of “inference”—the moment the chatbot “infers” an answer to the user’s query  
19 based on data. This allows the chatbot to provide accurate, up-to-date responses to user queries.  
20 Google, Bing, and other search engines browse the internet to collect and use similar data for this  
21 precise purpose.<sup>11</sup>

22 <sup>10</sup> Google Search Central, *More Options to Help Websites Preview Their Content on Google*  
23 *Search* (Sept. 24, 2019), <https://developers.google.com/search/blog/2019/09/more-controls-on-search> (“Google uses content previews, including text snippets and other media, to help people  
24 decide whether a result is relevant to their query.”); Barry Schwartz, *Search Engine Roundtable,*  
25 *Bing Search Result Snippets That Are Scrollable* (Sept. 18, 2024),  
<https://www.seroundtable.com/bing-scrollable-search-result-snippets-38071.html>.

26 <sup>11</sup> Google Cloud, *How Gemini for Google Cloud Works*,  
27 <https://cloud.google.com/gemini/docs/discover/works#:~:text=The%20Gemini%20large%20language%20models,train%20the%20Gemini%20foundation%20models>; Emma Roth, *Microsoft*  
28 *Reportedly Orders AI Chatbot Rivals to Stop Using Bing’s Search Data* (Mar. 25, 2023),  
<https://www.theverge.com/2023/3/25/23656336/microsoft-chatbot-rivals-stop-using-bing-search->

1 27. Google uses Google’s search engine functionality, as well as data from Google  
2 Search including the text of third-party webpages so its LLM, Google Gemini, can respond to user  
3 queries. Google’s Gemini already has a reported 13.5% share of the nascent and highly lucrative  
4 GenAI chatbot market, making it the third largest player in the space.<sup>12</sup> Microsoft, which offers  
5 Bing, uses the Bing search engine and search data to power development of its LLM.<sup>13</sup>

6 28. Unlike other search engines, Brave provides search functionality to anyone who signs  
7 up for its Brave Search API offering, which can be accessed for free in many cases, and in other  
8 cases for a small fee. Brave’s search APIs provide third-party chatbots with a valuable, affordable  
9 way to access search functionality. And that’s why companies, like Cohere, Mistral AI, Perplexity,  
10 and You.com, are coming to Brave.

11 29. These third-party GenAI companies, and Brave by extension, represent serious  
12 competitive threats to Google, an entity that partners with Defendants. But that potential  
13 competition with Google and other large incumbents would be seriously undermined if third-party  
14 GenAI companies were denied access to Brave’s data.

15 30. Notwithstanding the many benefits that Brave provides in the search engine and  
16 GenAI spaces, Defendants appear to seek to put Brave out of business. Defendants’ weapon of  
17 choice is their vast copyright portfolio, which consists of thousands of articles published in major  
18 newspapers and other publications, including the *Wall Street Journal* and *New York Post*.

19 31. Defendants accused Brave of copyright infringement in a letter “to demand  
20 compensation for all past unauthorized use and sale by Brave of News Corp’s copyrighted content,”

21 \_\_\_\_\_  
22 index (“Microsoft apparently draws the line at using Bing’s search index as fodder for AI  
23 chatbots”); Andrew Hutchinson, *Meta Is Developing a Search Engine to Power Its AI Chatbot*  
(Oct. 28, 2024), <https://finance.yahoo.com/news/meta-developing-own-search-engine-153903381.html>.

24 <sup>12</sup> Medium, *The Best AI Chatbots for 2025: A Comprehensive Comparison*,  
25 <https://medium.com/@ironhack/the-best-ai-chatbots-for-2025-a-comprehensive-comparison-4dad0d4a08c4>.

26 <sup>13</sup> See Microsoft, *Copilot in Bing: Our approach to Responsible AI* (May 2024),  
27 <https://support.microsoft.com/en-us/topic/copilot-in-bing-our-approach-to-responsible-ai-45b5eae8-7466-43e1-ae98-b48f8ff8fd44#:~:text=Copilot%20in%20Bing's%20intended%20uses,and%20within%20the%20c>  
28 [hat%20experience](https://support.microsoft.com/en-us/topic/copilot-in-bing-our-approach-to-responsible-ai-45b5eae8-7466-43e1-ae98-b48f8ff8fd44#:~:text=Copilot%20in%20Bing's%20intended%20uses,and%20within%20the%20c) (Microsoft’s AI chatbot, Copilot, uses Bing search).

1 and included a series of unduly burdensome requests for information, presumably to ascertain an  
2 amount of “compensation” to demand. Defendants’ threat, which included reference to a separate  
3 litigation brought by Defendants against a third party in which Defendants seek statutory damages,  
4 indicates Defendants’ intention to seek potentially *billions* of dollars in statutory copyright damages  
5 against Brave.

6 32. But Brave’s actions are not infringement, nor do they breach any contract. Instead,  
7 they are fair use. The asserted copyright-protected works are being used in a transformative way—  
8 to offer a search engine, which none of Defendants do. Brave also uses its search functionality to  
9 improve the results of third-party chatbots. Defendants also do not offer anything comparable to  
10 that. While Defendants may license their works for LLM training, that is not the same thing Brave  
11 offers. Defendants do not undertake the massive effort that Brave and other search engines do to  
12 index the web and then identify third-party content that is relevant to user queries. As a result, they  
13 cannot offer a chatbot the ability to step into the shoes of a search engine user to rapidly deploy  
14 searches necessary to provide accurate, up-to-date responses to user queries at the point of inference.  
15 The remaining fair use factors also make clear that Brave’s actions are allowed. Defendants’ works,  
16 largely news reporting articles, are heavily factual, and the snippets represent just a small percentage  
17 of the works. And Defendants themselves benefit from Brave’s maintenance of a search engine—  
18 as noted above, Brave always attributes the sources of third-party content, including from  
19 Defendants’ websites, which may promote user traffic to Defendants’ websites and articles.  
20 Meanwhile, Defendants’ breach of contract allegations are expressly preempted by the federal  
21 Copyright Act and otherwise fail because Brave did not agree to Defendants’ contracts of adhesion.

22 33. Defendants, sophisticated parties with sophisticated counsel, know all this. But they  
23 nonetheless have made unwarranted demands of Brave, seemingly in hopes that the threat of  
24 company-killing statutory damages will force Brave to submit to unwarranted payment demands for  
25 the right to interact with their website content—which includes not only copyright-protected  
26 material but also website content not protected by copyright, thereby unlawfully expanding  
27 Defendants’ rights under the law (even setting aside fair use). This is copyright misuse.  
28



1 43. News Corp Australia is an Australian company with a principal place of business in  
2 Sydney, Australia. News Corp Australia is a wholly-owned subsidiary of News Corp.

### 3 JURISDICTION AND VENUE

4 44. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
5 § 2201 and 28 U.S.C. §§ 1331, 1338(a), and supplemental jurisdiction over Brave's breach of  
6 contract declaratory judgment claim pursuant to 28 U.S.C. § 1367.

7 45. This Court has personal jurisdiction over Defendants because (a) Brave resides and  
8 is being harmed in this District and (b) a substantial portion of the events giving rise to the lawsuit  
9 occurred within this District, including Brave's development of the technology that Defendants  
10 contend infringes their intellectual property and Defendants' sending a demand letter and litigation  
11 threat to Brave in this District that accuses Brave of infringing Defendants' intellectual property  
12 rights in this District.

13 46. Defendants News Corp UK and News Corp Australia are alternatively subject to  
14 jurisdiction in any state's court of general jurisdiction and therefore personal jurisdiction over News  
15 Corp UK and News Corp Australia in this Court is proper pursuant to Fed. R. Civ. P. 4(k)(2) based  
16 on their contacts with the United States.

17 47. Venue is proper in this judicial District for all claims under 28 U.S.C. §§ 1391(b)(2)  
18 and 1391(b)(3).

### 19 FACTUAL BACKGROUND

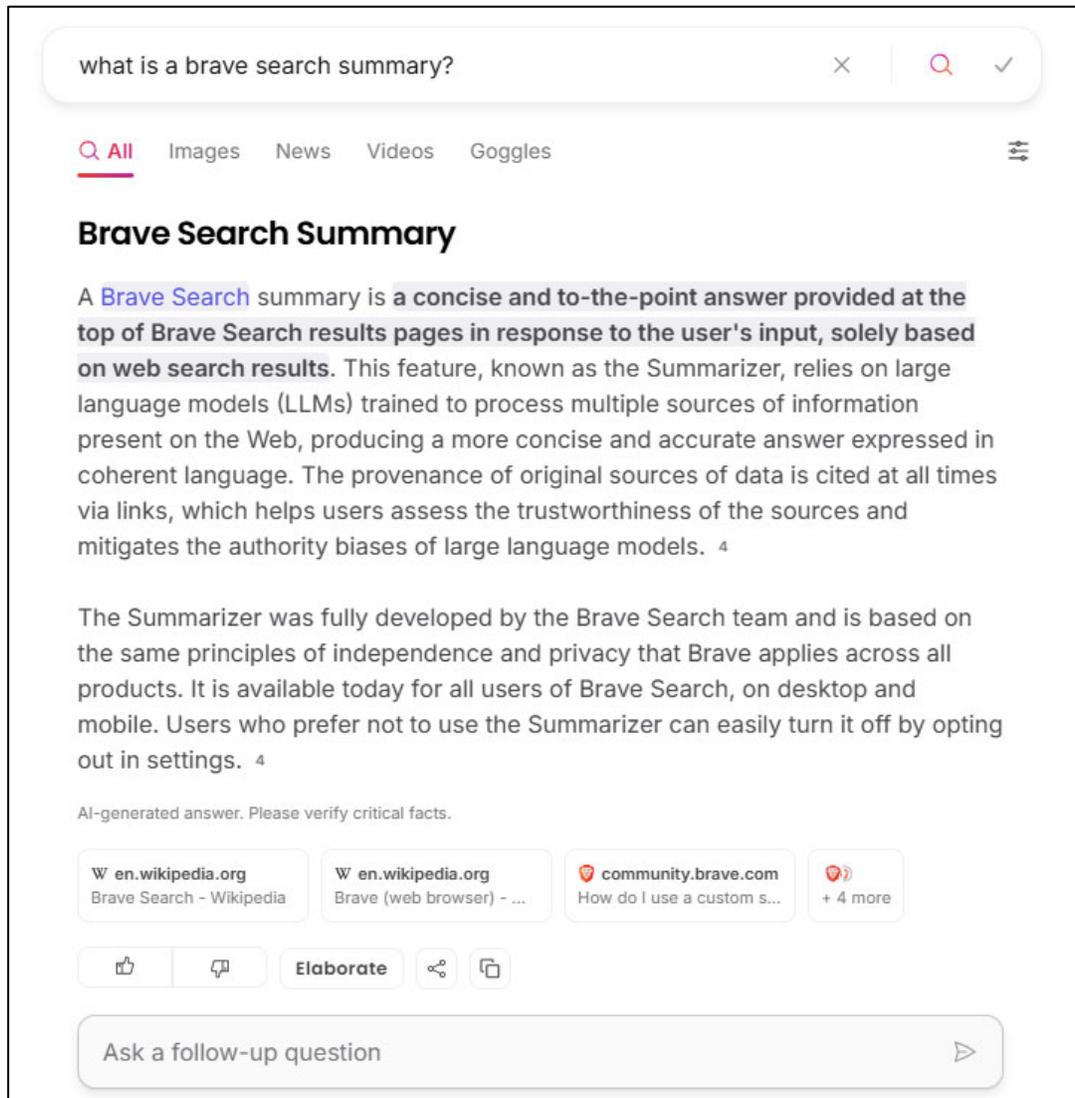
#### 20 **A. Brave's Disruptive Business**

21 48. Brave offers a search engine called Brave Search. Brave Search has a very small  
22 share of the entire search market, but it is currently one of the most rapidly growing search engines.

23 49. Brave's search engine fills a void in the marketplace. The marketplace is dominated  
24 by Google, which has well-documented privacy issues, including the company's practice of  
25 collecting, sharing, and selling its users' data. Bing, which holds much of the remaining search  
26 market share, similarly collects and leverages user data.<sup>14</sup>

27 \_\_\_\_\_  
28 <sup>14</sup> Microsoft, *How Microsoft Stores and Maintains Your Search History*,  
<https://support.microsoft.com/en-us/windows/how-microsoft-stores-and-maintains-your-search->





58. Brave’s summaries are accompanied by citations to the sources that were drawn on and links to those websites.

59. Similar to many other search engines, Brave offers a feature Brave calls “snippets.” Snippets provide richer information (such as locations, lists, direct answers, featured descriptions, etc.) in a “preview” format at the top of search results pages.

60. Brave’s “snippets” are short, verbatim excerpts of third-party content that represent, on average less than 1% of third-party content. The “snippets” are accompanied by citations and links back to the original third-party content, a feature enabled by Brave’s use of verbatim snippets. Google and Bing also provide search results with snippets.

1           61. Depending on the search query, Brave may create more than one and up to five  
2 snippets, often from multiple sources, that are uniquely tied to the specific search. For searches  
3 performed by human users, Brave provides a single snippet excerpt for each website in the search  
4 result. For chatbot searches through Brave Search APIs, Brave may provide up to five snippet  
5 excerpts to facilitate the task being performed by the chatbot.

6           62. Snippets content is generated from the Brave Search index, as well as through an AI  
7 model that analyzes pages and extracts the snippet of text most relevant to the user’s query.

8           63. One way Brave earns revenue is through its Brave Search API offering.

9           64. Through Brave Search API, Brave provides search APIs to third parties operating  
10 LLMs.

11           65. LLMs are a subcategory of GenAI models that have been designed to process and  
12 understand natural language inputs (also known as prompts), and predict and generate responsive  
13 text like a human. LLMs are trained to understand language patterns, semantics, and context  
14 surrounding a given prompt, and then employ probabilistic techniques to determine the specific  
15 word, phrase, or sequence of phrases that are likely to occur in response to a given prompt.

16           66. LLMs often support chatbots, or computer programs that simulate human  
17 conversations with users. Users provide a text input to a chatbot, which guides the LLM’s response  
18 generation process by laying out the context for the LLM to understand the user’s desired response.  
19 Once an LLM receives an input, it relies on its training to provide accurate, reliable responses to the  
20 user.

21           67. In response to user queries, a chatbot “infers” an answer based on data. Through  
22 Brave’s Search APIs, Brave allows third-party chatbots to essentially step into the shoes of a Brave  
23 search engine user and leverage Brave’s search technology at the time of “inference”— the moment  
24 the chatbot “infers” an answer to the user’s query based on data. Brave’s Search APIs provide the  
25 chatbot with real-time Brave search results, which include links to third-party webpages and snippets  
26 from those webpages, allowing the chatbot to provide accurate, up-to-date responses to user queries.

27           68. Google and Bing, the two dominant search engines, browse and index the internet to  
28 collect and use similar data for this precise purpose.

1           69. The data Brave allows third-party chatbots to access for inference includes the  
2 snippets that Brave generates from third-party content and which search engine users see when  
3 previewing content available through a third-party link.

4           70. Brave also includes “alternate snippets for AI” which also are collected from third-  
5 party content, but which are not presented to search engine users as content previews. These  
6 alternate snippets also are limited to 300 characters per snippet, with each snippet comprising on  
7 average less than 1% of third-party content. In this context, Brave’s Search API may provide up to  
8 five “snippets” per website for use by GenAI chatbots.

9           71. In addition to snippets, Brave’s Search APIs include “Schema enriched Web results,”  
10 an enriched set of structured data about a webpage that better represents and describes the page. For  
11 example, a standard (non-enriched) search result for a *Rotten Tomatoes* movie review page might  
12 contain basic info like URL, title, and synopsis. By contrast, Brave’s schema-enriched result for the  
13 same movie page might include this basic info plus a thumbnail image; attributes like release date,  
14 director, actors, and rating; and even show review scores. Beyond movies, Brave Search can enrich  
15 search results with many types of data, on many kinds of pages, including for videos, articles,  
16 products, recipes, software, books, contact information, and more.

17           72. The data set also includes metadata about third-party content that can be leveraged  
18 to ensure responses are up to date. And third parties have used Brave’s Search APIs with great  
19 success.

20           73. Additional third-party chatbot makers use Brave search APIs as well, including  
21 Cohere, Mistral AI, and You.com, which represent alternatives to chatbots offered by Big Tech  
22 giants.

### 23           **B. Defendants Threaten Litigation to Curtail Brave’s Legitimate Fair Use**

24           74. Defendants are a group of publishing companies in the News Corp family of entities.

25           75. Defendants publish papers and entertainment outlets such as the *Wall Street Journal*,  
26 *New York Post*, *The Sun*, *The Times*, *Financial News*, *Barron’s*, and *Harper Collins*, among others.  
27 Defendants make articles and other content available on their many websites, including wsj.com,  
28

1 marketwatch.com, barrons.com, factiva.com, djindexes.com, dowjones.com, djnewsires.com,  
2 harpercollins.com, realtor.com, storyful.com, and nypost.com, among many others.

3 76. Defendants make billions of dollars of revenue each year; collectively, Defendants  
4 own thousands, if not tens of thousands, of registered copyrighted works.

5 77. On February 27, 2025, Defendants sent Brave a letter, attached as **Exhibit A**, directed  
6 to Brave's CEO, threatening litigation, alleging that Brave infringed Defendants' copyrights and  
7 breached their terms of use by accessing their publicly available websites to provide Brave's search  
8 functionality.

9 78. Defendants specifically alleged that Brave is "unauthorizedly and unlawfully  
10 misappropriating News Corp's copyrighted content."

11 79. Defendants complain about three core Brave search functionalities: indexing,  
12 summaries, and snippets.

13 80. First, Defendants complain that Brave indexes publicly accessible internet content to  
14 operate a search engine, alleging that "Brave scrapes News Corp websites without identifying itself  
15 and without authorization," to create Brave's "search index."

16 81. Defendants also allege that Brave's indexing is illegal because Brave "includes the  
17 scraped copyrighted News Corp content into a search index that Brave licenses and sells to third  
18 parties via its Search API, in competition with News Corp's own licensing and other monetization  
19 opportunities."

20 82. Defendants also complain about Brave's paraphrased summaries, writing that  
21 "Brave's Summarizer provides 'comprehensive answer[s]' related to 'real-time information that is  
22 up to date with today's events'" that "include significant portions of News Corp content and are  
23 deliberately designed to siphon away traffic (along with attendant advertising, subscription and  
24 licensing revenues) from News Corp's news publications."

25 83. Finally, Defendants complain about Brave's snippets, which are provided as  
26 previews to search engine users and to customers of Brave Search API who operate chatbots.  
27 Defendants specifically allege that Brave, via its Brave Search API offering, provides "'snippets'  
28 that are comprised of verbatim sentences and paragraphs of news articles, totaling hundreds of

1 words.” Defendants complain that “Brave has no legal right to scrape News Corp’s content for the  
2 purpose of selling that content to others.”

3 84. Based on the foregoing, Defendants allege that Brave has engaged in copyright  
4 infringement, including because Brave has made “unlawful reproductions that are a commercial  
5 substitute for News Corp’s original works,” and that Brave has “violat[ed] News Corp’s terms of  
6 service.”

7 85. Defendants’ letter demands that Brave cease and desist from accessing Defendants’  
8 publicly available websites and “demand[s] compensation for all past unauthorized use and sale by  
9 Brave of News Corp’s copyrighted content.”

10 86. In the same letter containing these accusations, Defendants referenced a case they  
11 filed against a third party, Perplexity AI, Inc. in which Defendants allege infringement of many  
12 registered copyrights and seek statutory damages.

13 87. Defendants’ letter also demanded that Brave provide various information for  
14 Defendants to ascertain an amount of “compensation” to demand:

- 15 a) “The list of AI firms that obtained News Corp’s content through Brave’s Search API  
16 and, separately, Brave’s Summarizer”;
- 17 b) “The user agent(s) and IP addresses for all crawlers that Brave uses upon News Corp  
18 websites”;
- 19 c) “Any policies or technical specifications that limit the amount of web content that  
20 Brave packages into ‘alternate snippets’”;
- 21 d) “The commercial terms on which Brave provides its customers with access to News  
22 Corp websites via Brave’s Search API, including guardrails set for creating  
23 derivative content, if any”; and
- 24 e) “The total number of individuals to which Brave has provided access to ‘Summaries’  
25 that incorporate text from News Corp’s articles.”

26 88. Defendants’ letter directed Brave to agree to their demands by no later than 14 days  
27 from receipt.  
28

1 89. Brave denies that any conduct Defendants complain of amounts to either copyright  
2 infringement or breach of contract.

3 90. Based on decades of legal precedent and practice, Brave’s search service is legal fair  
4 use permitted under the Copyright Act, 17 U.S.C. § 107, including because Brave’s use of  
5 Defendants’ copyright-protected works is transformative. That is because, unlike Brave, Defendants  
6 do not offer a search engine or search APIs. The additional fair use factors also weigh towards fair  
7 use because Defendants’ works (largely news articles) are factual, Brave uses no more of these  
8 works than is necessary to maintain its search engine, and Brave’s search engine benefits Defendants  
9 by driving internet traffic to their websites.

10 91. Defendants also have no viable breach of contract claim against Brave as a matter of  
11 law. Defendants’ terms of service provisions that prohibit accessing and using their website content  
12 except under certain conditions are preempted by the Copyright Act. Defendants attempt to restrict  
13 access to and use of their website content. The subject matter of the claim—website content—falls  
14 within the scope of the Copyright Act. The rights being asserted—limiting use of and access to this  
15 content—are equivalent to copyright rights under 17 U.S.C. § 101.

16 92. In addition, Brave did not agree to Defendants’ click-wrap and browse-wrap terms  
17 of use, which are contracts of adhesion that violate public policy.

18 93. With no viable copyright or contract claim, Defendants’ payment demands amount  
19 to copyright misuse. That is, first, because Defendants seek to leverage their copyrights to prohibit  
20 lawful fair use, or force Brave to pay unwarranted “compensation” for Brave’s fair use. And that  
21 is, second, because Defendants seek to leverage their copyrights in an anticompetitive manner, that  
22 runs contrary to public policy, and seeks to unlawfully extend their copyright rights beyond their  
23 lawful scope because Defendants’ letter demands that Brave pay to access and use “News Corp  
24 content” generally, without any regard to what is protected by copyright or not. At the same time,  
25 Defendants’ website terms of service prohibit and restrict access to and use of content generally,  
26 without regard to whether content is protected by copyright or not. And Defendants, accordingly,  
27 demand that Brave pay “compensation” for past access to their website content generally, without  
28 regard to whether content is protected by copyright or not. Defendants also demand that Brave cease

1 using Defendants’ content, notwithstanding that Brave’s conduct is protected fair use and that much  
2 of the content is not protected by copyright. But a copyright holder has no right to leverage its  
3 copyright to restrict use of and access to material not protected by copyright. Nor does a copyright  
4 owner have the right to threaten parties to restrict them from engaging in fair use. That is copyright  
5 misuse.

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Judgment of Non-Infringement)**

8 94. Brave repeats and realleges each and every allegation set forth above.

9 95. Defendants assert that Brave’s browsing, indexing and extracting limited data from  
10 Defendants’ websites (which Defendants characterize as “crawling” and “scraping”) for Brave to  
11 index the webpages and operate a search engine, summarize content, and create small snippet  
12 excerpts of content, as described above, infringes upon and violates Defendants’ alleged copyright  
13 rights.

14 96. Defendants have accused Brave of infringement in a letter threatening litigation,  
15 demanding that Brave cease the conduct at issue and pay Defendants compensation for alleged past  
16 infringement, and demanding, among other things, and that Brave provide Defendants with  
17 information Defendants would rely upon to demand a payment amount for Brave’s past use of  
18 Defendants’ works.

19 97. But Brave’s actions are not infringement because they are protected fair use under  
20 17 U.S.C. § 107, including because Brave uses Defendants’ copyright-protected works—the content  
21 on Defendants’ publicly available websites—in transformative ways that enable Brave to offer a  
22 search engine platform to individuals and search APIs to LLMs, services that Defendants themselves  
23 do not provide.

24 98. An actual, present, and justiciable controversy exists between Brave and Defendants  
25 concerning Brave’s fair use of Defendants’ publicly available website content—namely whether  
26 Brave has infringed any copyright-protected works, and will continue to infringe these works, by  
27 accessing, indexing, summarizing, and creating snippets of Defendants’ publicly available websites  
28 as necessary to perform core search engine functions.

1 99. Brave seeks a declaratory judgment that its use of Defendants’ publicly available  
2 website content as described above does not infringe Defendants’ copyright rights and does not  
3 otherwise violate any of Defendants’ alleged interests under 17 U.S.C. § 101 *et seq.*

4 100. The Court’s resolution of this claim will serve a useful purpose in clarifying the legal  
5 relations at issue and will terminate all aspects of the controversy between the parties because the  
6 parties’ dispute centers on whether Brave’s accessing and using Defendants’ content as described  
7 above is permitted under the law.

8 101. Under 17 U.S.C. § 505, Brave is entitled to recover its attorney fees and the full costs  
9 of this action.

10 **SECOND CLAIM FOR RELIEF**

11 **(Declaratory Judgment of Copyright Misuse)**

12 102. Brave repeats and realleges each and every allegation set forth above.

13 103. Defendants assert that Brave’s browsing, indexing and extracting limited data from  
14 Defendants’ websites (which Defendants characterize as “crawling” and “scraping”) for Brave to  
15 index the webpages and operate a search engine, summarize content, and create small snippet  
16 excerpts of content, as described above, infringes upon and violates Defendants’ alleged copyright  
17 rights.

18 104. Brave’s actions are not infringement because they are protected fair use, as described  
19 above.

20 105. Nonetheless, Defendants are attempting to leverage their registered copyrights to  
21 prevent Brave from engaging in this lawful conduct, including by sending Brave a threat to sue  
22 Brave and a demand for extortionate “compensation” which is not required under Copyright law.

23 106. In doing so, Defendants are attempting to use their limited copyright interests to exert  
24 a monopoly over all uses of their copyright protected works, including by preventing fair use.

25 107. Defendants also are attempting to use their limited copyright interests to force Brave  
26 to pay to access “News Corp content” generally, without any regard to what is protected by copyright  
27 or not.

28

1 108. Defendants’ actions constitute copyright misuse: an attempt to monopolize the  
2 legitimate use of their publicly available works, contrary to public policy and the limited exclusive  
3 rights granted under 17 U.S.C. § 101 *et seq.* and the United States Constitution Art. I, § 8, cl. 8, as  
4 specifically limited by 17 U.S.C. § 102, which limits copyright protection to “original works of  
5 authorship fixed in any tangible medium of expression,” and 17 U.S.C. § 107, which provides for  
6 fair use as a limitation on a copyright holder’s exclusive rights.

7 109. An actual, present, and justiciable controversy exists between Brave and Defendants  
8 concerning Brave’s fair use of Defendants’ publicly available website content—namely whether  
9 Brave has infringed any copyright-protected works, and will continue to infringe these works, by  
10 accessing, indexing, summarizing, and creating snippets of Defendants’ publicly available websites  
11 as necessary to perform core search engine functions.

12 110. Brave seeks a declaratory judgment that Defendants’ threatened or purported  
13 enforcement of an exclusive rights to prevent and punish Brave’s fair use and Brave’s use of  
14 materials not protected by copyright, as described above, constitutes copyright misuse, precluding  
15 any purported infringement claim by Defendants against Brave under 17 U.S.C. § 101 *et seq.* based  
16 on Brave’s use of Defendants’ website content to index the webpages and operate a search engine,  
17 summarize content, and create small snippet excerpts of content, as described above.

18 111. The Court’s resolution of this claim will serve a useful purpose in clarifying the legal  
19 relations at issue and will terminate all aspects of the controversy between the parties because the  
20 parties’ dispute centers on whether Brave’s accessing and using Defendants’ content as described  
21 above is permitted under the law.

22 112. Under 17 U.S.C. § 505, Brave is entitled to recover its attorney fees and the full costs  
23 of this action.

### 24 **THIRD CLAIM FOR RELIEF**

#### 25 **(Declaratory Judgment of No Breach of Contract – Terms of Service)**

26 113. Brave repeats and realleges each and every allegation set forth above.

27 114. Defendants assert that Brave is “violating News Corp’s terms of service,” which are  
28 browse-wrap and/or click-wrap contracts of adhesion that violate public policy, by “scrap[ing] News

1 Corp websites without identifying itself and without authorization, and [by] includ[ing] the scraped  
2 copyrighted News Corp content into a search index that Brave licenses and sells to third parties.”

3 115. The conduct Defendants complain of cannot amount to breach of contract because  
4 the allegations at issue sound in copyright law. Indeed, Defendants allege that the breach at issue is  
5 the unauthorized use and distribution of “copyrighted News Corp content.”

6 116. As a result, Defendants’ purported contract claims concern the subject matter and  
7 rights that fall within the scope of the federal Copyright Act.

8 117. Defendants’ purported contract claims are, therefore, preempted by the Copyright  
9 Act.

10 118. Defendants’ breach of contract allegations also fail because Defendants cannot show  
11 that Brave actually agreed to their terms of use, which are browse-wrap and click-wrap contracts of  
12 adhesion for which there was no contract formation. Those purported contracts also are contrary to  
13 public policy.

14 119. An actual, present, and justiciable controversy exists between Brave and Defendants  
15 concerning Brave’s use of Defendants’ publicly available website content and whether this conduct  
16 amounts to breach of Defendants’ terms of service, which, according to Defendants, prohibit and  
17 restrict “scraping.”

18 120. Brave seeks a declaratory judgment that its use of Defendants’ publicly available  
19 website content as described above does not amount to breach of contract, including because the  
20 terms of service provisions at issue are preempted by the federal Copyright Act under 17 U.S.C.  
21 § 301 and because Brave did not agree to the browse-wrap and click-wrap contracts at issue.

22 121. The Court’s resolution of this claim will serve a useful purpose in clarifying the legal  
23 relations at issue and will terminate all aspects of the controversy between the parties because the  
24 parties’ dispute centers on whether Brave’s accessing and using Defendants’ content as described  
25 above is permitted under the law.

26 **PRAYER FOR RELIEF**

27 Brave respectfully requests that this Court enter judgment in its favor on each and every  
28 claim for relief set forth above and award it the following relief, including but not limited to:

- 1 a) An order declaring that Brave’s use of Defendants’ copyright-protected articles and  
2 other works available on Defendants’ websites that Defendants may assert as  
3 infringed does not infringe upon, impair, or violate any federal, state, or common  
4 law rights, including any copyright interest, that Defendants may have or allege to  
5 have in the their works;
- 6 b) An order declaring that Defendants’ threatened or purported enforcement of  
7 copyright rights with respect to Brave’s use of Defendants’ copyright-protected  
8 articles and other works available on Defendants’ websites that Defendants may  
9 assert as infringed constitutes copyright misuse, precluding any purported  
10 infringement claim by Defendants against Brave under 17 U.S.C. § 101 *et seq.* for  
11 infringement of these works.
- 12 c) An order declaring that Brave has not breached any provision of Defendants’ terms  
13 of use, including because Defendants’ purported contract allegations based on  
14 Brave’s “scrap[ing] News Corp websites without identifying itself and without  
15 authorization, and [by] includ[ing] the scraped copyrighted News Corp content into  
16 a search index that Brave licenses and sells to third parties” are preempted by the  
17 Federal Copyright Act and because Brave did not agree to Defendants’ click-wrap  
18 and browse-wrap contracts of adhesion at issue;
- 19 d) An Order requiring Defendants to pay Brave’s costs and attorney fees in this action  
20 pursuant to 17 U.S.C. § 505 and other applicable statutes and laws;
- 21 e) An award of any applicable prejudgment and post-judgment interest according to  
22 law; and
- 23 f) Such other and further relief as the Court may deem appropriate, including without  
24 limitation all remedies provided for under any other applicable laws.

25 **JURY DEMAND**

26 Brave respectfully demands a jury trial pursuant to Fed. R. Civ. P. 38 on all issues so triable.  
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Respectfully submitted,

By: /s/ Andrew S. Ong

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